

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

# PCT

To:

see form PCT/ISA/220

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/US2004/000555

International filing date (day/month/year)  
10.01.2004

Priority date (day/month/year)  
10.01.2003

International Patent Classification (IPC) or both national classification and IPC  
B05B5/00

Applicant  
BATTELLE MEMORIAL INSTITUTE

### 1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66 1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office  
D-80298 Munich  
Tel. +49 89 2399 - 0 Tx: 523656 epmu d  
Fax: +49 89 2399 - 4465

Authorized Officer

Eberwein, M

Telephone No. +49 89 2399-7260



**WRITTEN OPINION OF  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2004/000555

---

**Box No. I Basis of the opinion**

---

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - ☐ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☐ in written format
    - ☐ in computer readable form
  - c. time of filing/furnishing:
    - ☐ contained in the international application as filed.
    - ☐ filed together with the international application in computer readable form.
    - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2004/000555

---

**Box No. II Priority**

---

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

---

**Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

---

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1,25,28
Inventive step (IS)	Yes: Claims	
	No: Claims	30,34
Industrial applicability (IA)	Yes: Claims	1-35
	No: Claims	

2. Citations and explanations

see separate sheet

**Re Item V.**

- 1 The following documents are referred to in this communication:

D1 : WO 02/055211 A

D2 : US 5 865 551 A

D3 : US 4 749 125 A

D4 : US 5 531 384 A

D5: DE 195 22 754 A

2 INDEPENDENT CLAIM 1

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT. Documents D1-D4 discloses all features of the very broad claims 1, 25, 28: A fluid container suitable for an electro hydrodynamic spray device, wherein said container comprises one reservoir configured to hold a sprayable liquid, one interface in fluid communication with said reservoir, one manifold comprising one fluid path in fluid communication with said interface, and one nozzle comprising one spray site, said spray site in fluid communication with said fluid path; and said device is configured to engage said container.

Claims 30 and 34 does not seem to involve an inventive step.

- 2.2 Although claims 1 and 25 and 28 (same for claim 30 and 34) have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought and in respect of the terminology used for the features of that subject-matter. The aforementioned claims therefore lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection.

The number of claims must be reasonable when considered in relation to the nature of the invention claimed, and undue repetition of wording, for example between one claim and another, should be avoided by the use of the dependent form regarding independent claims in the same category (see also PCT Rule

6.1(a))

In order to overcome this objection, it would appear appropriate to file an amended set of claims defining the relevant subject-matter in terms of a minimum number of independent claims in each category followed by dependent claims covering features which are merely optional (Rule 6.4 PCT).

- 2.4 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- 2.5 Independent claims are not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art being placed in the preamble (Rule 6.3(b)(I) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).
- 2.6 Independent claims should therefore be redrafted accordingly. If, however, the applicant is of the opinion that the two-part form would be inappropriate, then reasons therefor should be provided in the letter of reply. In addition, the applicant should ensure that it is clear from the description which features of the subject-matter of claims are already known in combination from the cited documents (see the PCT Guidelines, III-2.3a).
- 2.7 Claims 3-18 do not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined. The claims attempt to define the subject-matter, here the fluid container, via the liquid contained therein instead of technical features.